IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7377 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GSRTC

Versus

MANEKLAL MOHANLAL JADAV

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Appearance:

1. Special Civil Application No. 7377 of 2002

MR HARDIK C RAWAL for the petitioner

MR KISHOR M PAUL for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 25/11/2003

ORAL JUDGEMENT

RULE. Mr.Kishor M. Paul, the learned advocate waives service of rule. At the joint request of the

learned advocates the matter is taken up for final disposal today. The present petition is filed by Gujarat State Road Transport Corporation (hereinafter referred to as "the corporation") being aggrieved of the judgement and award dated 21.12.2001 passed by the Industrial Tribunal No.1, Rajkot (hereinafter referred to as "the Tribunal") in Reference (ITR) No.195 of 1994. The learned Member of the Industrial Tribunal was pleased to quash and set aside two Office Orders, viz. (i) dated 29.4.1993 whereby two annual increments with future effect were stopped, and (ii) dated 18.5.1994, whereby five annual increments were stopped with future effect. It was also ordered by the learned Member of the Tribunal that if any amount by way of difference is payable, the same shall be paid within 30 days from the date of publication of award.

2. Mr.Raval, the learned advocate invited attention to the relevant documents from the Record & Proceedings of the case which was called for by order dated 21.1.2003. Mr.Raval, the learned advocate submitted that the conclusions reached by the learned Member of the Tribunal in para 7 of the award to the effect that the defence of the workman was not taken into consideration by the reviewing authority, that the petitioner corporation did not examine any witness against the defence of the respondent workman and that the petitioner corporation has not produced any evidence, are not borne out from the record. Mr.Raval submitted that the learned Member of the Tribunal had no reason to interfere with the order passed by the petitioner corporation, more particularly in light of the default card which was produced before the Hon'ble Tribunal and the note of the same is taken by the learned Member of the Tribunal in para 5 of the award. Mr.Raval submitted that it was by way of indulgence that the petitioner corporation did not pass an order of dismissal. The reviewing authority taking into consideration the length of service of the respondent workman and the fact that an order of dismissal is nothing but 'economic death' of an employee, did not pass the same and instead passed the order of stoppage of five increments with future effect. The learned Member of the Tribunal ought to have restrained itself from interfering with the order passed by the petitioner corporation.

3. Mr.Kishor M. Paul, the learned advocate for the respondent workman vehemently submitted that the present petition is filed under Articles 226 & 227 of the Constitution of India and therefore, no interference is called for from this Court. He further submitted that

the learned Member of the Tribunal after having taken into consideration all the relevant factors has deemed it fit to quash and set aside the order of the petitioner corporation and this Court may not interfere with the discretion exercised by the learned member of the Tribunal. Mr.Paul, the learned advocate also submitted that punishment of stoppage of five increments with future effect is also very harsh punishment, which could not have been awarded by the petitioner corporation taking into consideration the probability/ possibility of the alleged irregularity being by way of negligence.

4. After hearing both the learned advocates, this Court is of the considered opinion that the learned Member of the Industrial Tribunal has committed an error in quashing the said orders of punishment, more particularly in light of the fact that earlier also the respondent workman had committed 10 defaults and the present default was the 11th one. All these defaults pertain to financial irregularities. In view of the latest decisions of the Honourable the Apex Court in the matters of financial irregularities, the petitioner corporation could have imposed penalty of dismissal on an employee against whom a case of financial irregularity is proved. However, as the petitioner corporation has not thought fit to impose penalty of dismissal, the matter is remitted back to the petitioner corporation.

5. The petition is accordingly allowed. The award and order of the Industrial Tribunal No.1, Rajkot in Reference (ITR) No.195 of 1994 is hereby quashed and set aside. The respondent workman is to visit with the punishment of stoppage of five increments with future effect which is imposed by Office Order dated 18.5.1994. Rule is made absolute with no order as to costs.

(Ravi R. Tripathi, J.)

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